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UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

 CLERK

ROBERT RABY,

Plaintiff,

-vs-

UNION COUNTY JAIL and
DAN LIMOGES,

Defendants.

CIV 04-4083

MEMORANDUM OPINION AND
ORDER GRANTING
MOTION TO DISMISS

On June 26, 2006, this Court issued a Memorandum Opinion and Order dismissing three defendants in this 42 U.S.C. §1983 case because Plaintiff Robert Raby ("Raby") failed to file proof of service of the Summons and Complaint on those defendants. In that same Order, Plaintiff was directed to respond to the Motion to Dismiss filed by Union County Jail and Dan Limoges, including reasons why Plaintiff's claims against those defendants should not be dismissed for lack of prosecution. Plaintiff was warned that if he failed to file a response within twenty days of the date of the June 26 Order, the remainder of the case would be dismissed for lack of prosecution. No response was filed by Plaintiff, and defendants Union County Jail and Dan Limoges filed another motion to dismiss for lack of prosecution on July 28, 2006. (Doc. 39.) Almost two months have passed since that motion was filed and Plaintiff has yet to respond.

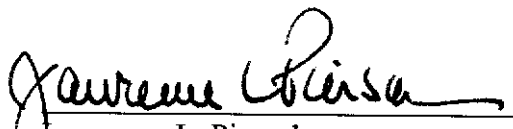
A dismissal under Federal Rule of Civil Procedure 41(b) for failure to prosecute or for failure to comply with a court order is proper when there has been a "clear record of delay or contumacious conduct by the plaintiff." *Skelton v. Rapps*, 187 F.3d 902, 908 (8th Cir. 1999) (internal quotation marks and citations omitted). The Court is to balance its need to advance a crowded docket with the consequences of denying a plaintiff his day in court. *See Garland v. Peebles*, 1 F.3d 683, 687 (8th Cir. 1993).

Raby's Complaint was filed over two years ago. Despite the warning that his case would be dismissed if he did not respond to the first motion to dismiss for failure to prosecute, Raby failed to follow the Court's Order, and then he neglected to respond to the defendants' second motion to dismiss for lack of prosecution. Balancing the relevant factors in deciding whether to dismiss the claims against the two remaining defendants, the Court concludes that the need to advance the Court's crowded docket outweighs the consequences to Raby, who appears to have lost all interest in his case. There is a clear record of delay by Raby and his claims against defendants Union County Jail and Dan Limoges will be dismissed with prejudice. Accordingly,

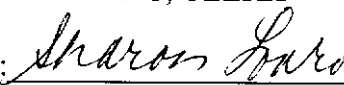
IT IS ORDERED that the Motion to Dismiss for Lack of Prosecution, doc. 39, is granted, and defendants Union County Jail and Dan Limoges are dismissed from this action

Dated this 22nd day of September, 2006.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
(SEAL) DEPUTY